

LOS ANGELES COUNTY DISTRICT ATTORNEY  <b>CHARGE EVALUATION WORKSHEET</b>	<input type="checkbox"/> Further investigation requested. <input type="checkbox"/> Probation Violation in lieu of filed. <input checked="" type="checkbox"/> Prosecution declined.		DA CASE NO. 24091832	Page 1 of 3 Date: October 27, 2004
			POLICE CASE NO. (DR OR URN NO.) 404-00040-2003-441	DA OFFICE CODE J.S.I.D. 04-0709R

### SUSPECT DATA

NO.	SUSPECT NAME	BKNG NO.	CHARGE	REASON
01	NOVELICH, GARY	N.I.C.	PC118.1	B - Insufficient evidence

DESCRIPTION SEE ATTACHED.				
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STEVE COOLEY District Attorney	COMPLAINT DEPUTY (PRINT) LINDA SUE REISZ/ap	DEPUTY CODE 106260	COMPLAINT DEPUTY (SIGNATURE) <i>Linda Reisz</i>	REVIEWING DEPUTY <i>[Signature]</i>
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In submitting this matter for consideration of a complaint, written reports of substantially all available evidence (except as to the oral information, if any, purporting to have been given by me and which is fully and correctly stated above) have been submitted to the above-named Deputy (copies of which are attached hereto) except the following:

The disposition of this matter will be final unless the commanding officer requests reconsideration of the case, stating his reasons on the back of this form.

MAILED 10/29/04  
 OFFICER - SERGEANT ALLEN KUNIHIO  
 LASD - I.C.I.B.

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of allegations that Los Angeles County Sheriff's Deputy Gary Novelich, #450611, filed a false police report, a violation of Penal Code Section 118.1. For the reasons set forth below, this office declines to initiate criminal proceedings in this matter.

## FACTUAL ANALYSIS

The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department submitted to this office on August 23, 2004 by Sergeant Allen Kunihiro, Internal Criminal Investigations Bureau. We have not considered any administratively compelled statement Deputy Novelich may have made.

In June of 2004, Deputy Novelich applied to the Huntington Beach Police Department and the Westminster Police Department to become a police officer. At the time of his application, he was assigned to the Los Angeles County Sheriff's Department Compton Station. During pre-employment polygraph examinations given by both departments, he stated that he had previously written inaccurate police reports while employed as a deputy sheriff and had testified under oath in court in a manner consistent with the police reports. Investigators spoke to the polygraph examiner who conducted the interview for the Huntington Beach Police Department. During the interview, Deputy Novelich explained that he was trained to write arrest reports that did not reflect the proper sequence of events, but that were "cleaner reports." He stated that in the areas where he was assigned, many arrestees carried guns and narcotics and he was taught to write the arrest report to state that the contraband had been recovered during a search incident to arrest. Deputy Novelich also stated that most deputies wrote reports in a similar manner. The polygraph examiner for the Huntington Beach Police Department stated that Deputy Novelich did not mention the number of arrest reports he had written in this manner, nor did he state a number of times he testified inaccurately in court.

Investigators also spoke to the polygraph examiner for the Westminster Police Department who conducted the pre-employment interview of Deputy Novelich. Deputy Novelich stated that he had written inaccurate police reports 20 to 100 times. Deputy Novelich gave as an example a situation in which he would stop an individual on the street, conduct a pat-down search, retrieve narcotics, then conduct a warrant check. When Deputy Novelich would arrest such an individual for an outstanding warrant, he would write in the report that the narcotics were recovered incident to the arrest for the outstanding warrant. Deputy Novelich implied, in his hypothetical, that his initial stop was based upon suspicions that he had about the individual. Deputy Novelich did not actually state that he believed he lacked probable cause when he conducted the initial search.

Deputy Novelich declined to make a statement to the investigators assigned to the Internal Criminal Investigations Bureau.

Investigators interviewed deputies who worked with Deputy Novelich who stated that they had not known him to falsify reports. Fellow deputies further stated that they did not know of a situation where Deputy Novelich encouraged trainees to manufacture probable cause when writing reports.

## CONCLUSION

Penal Code Section 118.1 states that "every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false...is guilty of filing a false report...." Materiality is an essential element of the crime of perjury and must be determined by the jury. People v. Hedgecock (1990) 51 Cal.3d 395. Materiality depends upon "whether the false statements concern a subject [which ] could reasonably influence the outcome of the proceedings." Id. at 405.

Further, the corpus delicti of a crime must be proved independent of an admission or confession by the defendant. CALJIC 2.72 states, in pertinent part, that "No person may be convicted of a criminal offense unless there is some proof of each element of the crime independent of any confession or admission made by him."

Insufficient evidence exists upon which to base criminal charges against Deputy Novelich. In this matter there is no evidence consisting of an actual police report in which statements were proved to be knowingly false. Deputy Novelich's statement alone does not provide sufficient evidence upon which to initiate criminal proceedings against him. Further, the lack of a police report containing known falsehoods deprives this office of the opportunity to analyze whether the falsehoods were material, as required in a prosecution under Penal Code Section 118.1.

We are closing our file and will take no further action in this matter.